Dec 20. 78. Arg

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~365~~ 101

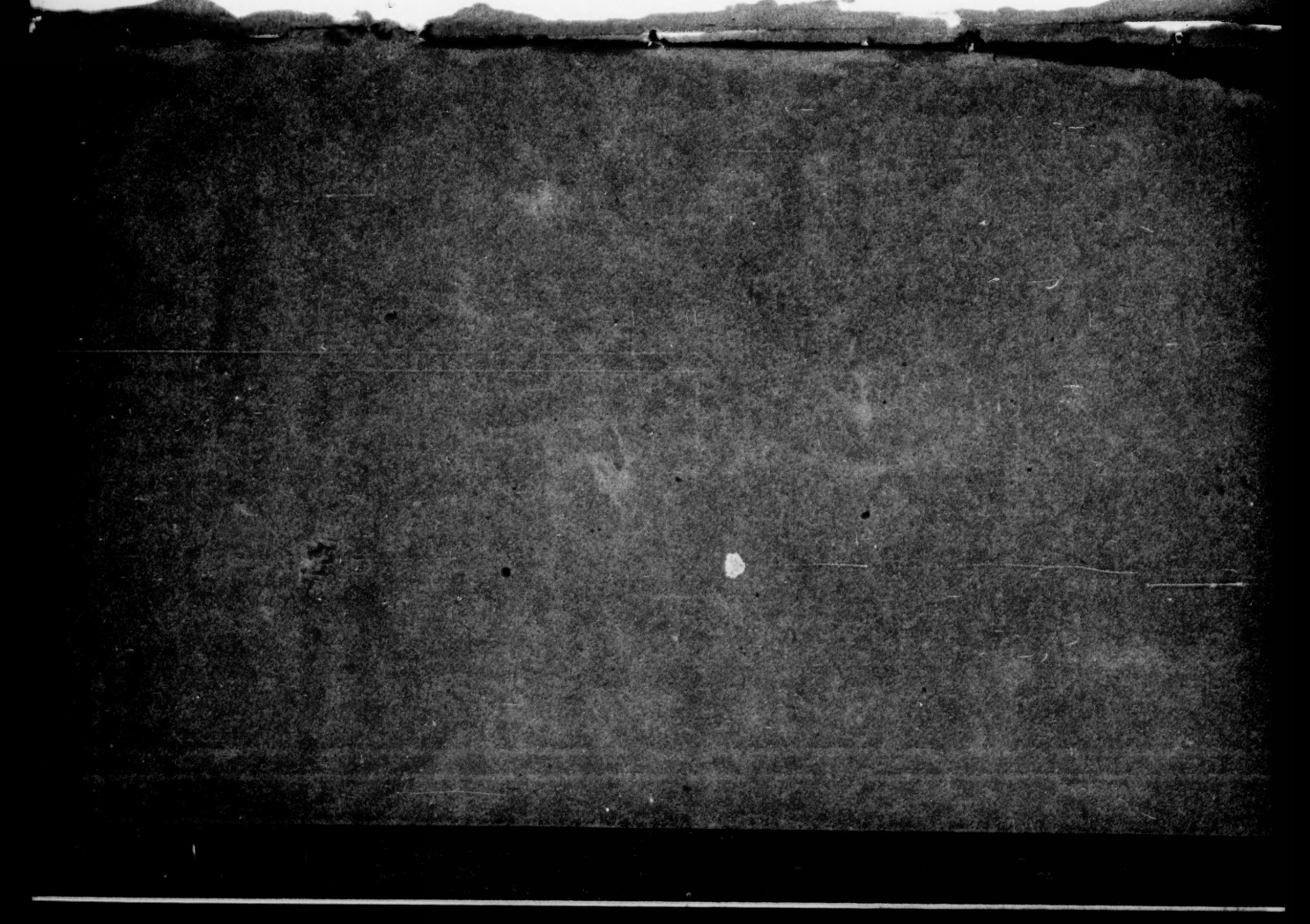
WILLIAM C. WILSON, PLAINTIFF IN ERROR,

vs.

SALAMANCA TOWNSHIP, CHEROKEE COUNTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED MARCH 17, 1876.



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1 In the circuit court of the United States for the district of Kansas.

WILLIAM C. WILSON, PLAINTIFF,
vs.
SALAMANCA TOWNSHIP, CHEROKEE COUNTY, Kansas, defendant. } 1143.

Be it remembered that the following proceedings were had in the above-stated case, as appears from the records thereof, to wit:

Journal entry.

On the twenty-third day of November, A. D. 1875, with the consent of the parties hereto, by their attorneys in open court, it is ordered by the court that said plaintiff have leave to file an amended petition in this case, which is accordingly done.

And on this day, to wit, November 23d, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his amended petition in said entitled action, which said amended petition, with the indorsements thereon, is in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
District of Kansas:

In the circuit court of the United States for the district of Kansas.

WILLIAM C. WILSON, PLAINTIFF,
vs.
SALAMANCA TOWNSHIP, CHEROKEE COUNTY, Kansas, defendant.

Amended petition.

William C. Wilson, the plaintiff, who is citizen of the State of Missouri, complains of the township of Salamanca, in the county of Cherokee, in the State of Kansas, defendant, which is a municipal corporation created and existing under and in pursuance of the laws of Kansas, and a citizen thereof.

2 *And for other and further causes of action, the plaintiff states that the defendant heretofore, to wit: On the second day of September, A. D. 1872, made and issued its certain writing obligatory, dated the day and year last aforesaid, designated "Salamanca Township bond," number 1, signed by John Raleys, the then township trustee, and W. O. Branin, the then township clerk of said township, its agents in that behalf thereunto duly appointed and authorized, and now here shown to the court, whereby the defendant acknowledged itself indebted and firmly bound to the Memphis, Carthage & Northwestern Railroad Company or bearer, in the sum of five hundred dollars; which sum the said township of Salamanca, for value received, thereby promised to pay to said company or bearer, at the National Park Bank, in the city of New York and State of New York, twenty years after date, with interest thereon, from the date thereof, at the rate of ten per cent. per annum payable annually on the first day of September of each year, on the presentation and delivery at said National Park Bank, in said city of New York, State of New York, of the coupons of interest thereto attached; which

said bond was issued pursuant to an order of the proper officers of said township, made by authority of an act of the legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of said bonds, the registration of other bonds, and the repeal of all laws in conflict therewith," approved March 2d, 1872, and ordered by the qualified electors of said township at an election duly held, as by the recitals of said bond fully appears; and plaintiff states that said election was held on the seventh day of November, A. D. 1871, under and in pursuance of the act of the legislature of the State of Kansas, entitled "An act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same," approved February 25th, A. D. 1872, whereat it was duly voted by the voters and qualified electors of said township, that the defendant should subscribe for $75,000 of the capital stock of the State Line, Oswego and Southern Kansas Railway, and issue its bonds in payment thereof; which said last mentioned railway corporation became merged in and duly consolidated with another railroad company, so as by such merger and consolidation to constitute and form the Memphis, Carthage and Northwestern Railroad Company aforesaid; and plaintiff states that said bond was delivered to the said Memphis, Carthage and Northwestern Railroad Company in part payment of such subscription made by said Salamanca Township for seventy-five thousand dollars of the capital stock of said company to aid it in the construction of its railroad, under authority given by the said statutes of said State of Kansas, and that said bond was received by said company, and so applied, and that the defendant still holds and owns the said stock, and has ever since said subscription claimed and exercised the rights of a stockholder in said company, and that the said bond was sold by said company for value to the purchaser with the said coupons attached; and the plaintiff states that the auditor of the State of Kansas, by his certificate indorsed upon the back of said bond under his seal of office, duly certified that said bond had been regularly and legally issued, that the signatures thereto were genuine, and that the said bond had been duly registered in his office in accordance with said act of the legislature, approved March 2d, 1872.

1. And plaintiff states that the defendant, by its certain interest coupon number 1, signed by said W. O. Branin, the then clerk of said Salamanca Township, Cherokee County, Kansas, now detached from said bond and herewith filed and shown to the court, promised to pay the sum of fifty dollars on the first day of September, A. D. 1873, being interest on said bond number 1 for $500, payable at the National Park Bank, in the city and State of New York; that the plaintiff is the owner, holder, and bearer thereof for value, and that an annual installment of interest on said bond, amounting to the sum of fifty dollars, and represented by said coupon therefor, fell due on the first day of September, 1873, and the same remains wholly due and unpaid.

2. And plaintiff states that the defendant, by its certain other interest coupon number 2, signed by said W. O. Branin, the then clerk of said Salamanca Township, Cherokee County, Kansas, now detached from said bond and herewith filed and shown to the court, promised to pay the sum of fifty dollars on the first day of September, A. D. 1874, being interest on said bond number 1 for $500, payable at the National Park Bank, in the city and State of New York; that the plaintiff is the owner, holder and bearer thereof for value, and that an annual install-

ment of interest on said bond, amounting to the sum of fifty dollars, and represented by said coupon therefor, fell due on the first day of September, 187 , and the same remains wholly due and unpaid.

3. And plaintiff states that the defendant, by its certain other interest coupon number 3, signed by said W. O. Branin, the then clerk of Salamanca Township, Cherokee County, Kansas, now detached from said bond and herewith filed and shown to the court, promised to pay the sum of fifty dollars on the first day of September, A. D. 1875, being interest on said bond number 1, for $500, payable at the National Park Bank, in the city and State of New York; that the plaintiff is the owner, holder, and bearer thereof for value, and that an annual installment of interest on said bond amounting to the sum of fifty dollars, and represented by said coupon therefor, fell due on the first day of September, 187 , and the same remains wholly due and unpaid.*

3 (Here followed one hundred and six (106) printed sheets in said amended petition, verbatim like the foregoing portion embraced in asterisks except in the numbers of the respective bonds, as follows: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 131, 132, 136, 138, 139, 140, 149.)

4 And the plaintiff states that the following is a copy of one of the bonds and coupons hereinbefore mentioned:

UNITED STATES OF AMERICA.

STATE OF KANSAS, COUNTY OF CHEROKEE.

Salamanca Township bond.

No. 149.] Interest ten per cent. per annum. [$500.

Know all men by these presents, that the municipal township of Salamanca, in the county of Cherokee and State of Kansas, acknowledges itself indebted and firmly bound to the Memphis, Carthage and Northwestern Railroad Company, or bearer, in the sum of five hundred dollars, which sum the said township of Salamanca, for value received, hereby promises to pay said company, or bearer, at the National Park Bank in the city of New York and State of New York, twenty years after date, with interest thereon from the date hereof, at the rate of ten per centum per annum, payable annually on the first day of September of each year, on the presentation and delivery at said National Park Bank, in said city of New York, State of New York, of the coupons of interest hereto attached.

This bond is issued pursuant to an order of the proper officers of said township made by authority of an act of the legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of said bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872, and ordered by the qualified electors of said township at an election duly held.

5 In testimony whereof, the said township of Salamanca has executed this bond by the township trustee of said township, under the order of the proper officers of said township, signing his name hereto, and by the township clerk of said township, under like order, attesting the same, and affixing hereto his name.

Done this second day of September, A. D. 1872.

JOHN RALEY,
Township Trustee of Salamanca Township, Cherokee County, Kansas.

Attested by—
W. O. BRANNIN,
Township Clerk of Salamanca Township, Cherokee County, Kansas.

Coupon.

$50.] COLUMBUS. [$50

The township of Salamanca, Cherokee County, Kansas, promises to pay the sum of fifty dollars on the first day of September, A. D. 1873, being interest on bond No. 149, for $500, payable at the National Park Bank, in the city and State of New York.

W. O. BRANNIN,
Township Clerk of Salamanca Township, Cherokee Co., Kas.

(Certificate endorsed :)

I, A. Thoman, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the legislature, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construc-
6 tion of railroads, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872.

Witness my hand and official seal this 11th day of October, 1872.

[SEAL.] A. THOMAN,
Auditor of State.

Wherefore the plaintiff prays judgment for the sum of sixteen thousand and fifty dollars, with interest upon one-third thereof from September 1st, 1873, upon one-third thereof from September 1st, 1874, and upon one-third thereof from September 1st, 1875, together with damages and costs.

JOSEPH SHIPPEN,
Pl'ff's Att'y.

(Endorsed :) No. 1143. U. S. circuit court, district of Kansas. William C. Wilson vs. Salamanca Township. Amended petition. Filed Nov. 23d, 1875. A. S. Thomas, clerk. Shippen, pl'ff's att'y.

7 And on this day, to wit, November 26, 1875, the defendant, by its attorneys, filed in the clerk's office of said court its answer in said entitled action; which said answer with the endorsements thereon is in the words and figures following, to wit:

Answer.

In the circuit court of the United States in and for the district of Kansas.

WILLIAM C. WILSON, PLAINTIFF,
vs.
THE TOWNSHIP OF SALAMANCA, IN THE COUNTY of Cherokee, State of Kansas, defendant.

And now comes the defendant above named and admits that an election was held November 7th, 1871, at which it was voted by the qualified electors of Salamanca Township that said township should subscribe seventy-five thousand dollars ($75,000) to the capital stock of the State Line, Oswego and Southern Kansas Railroad Company, and issue its bonds in payment therefor; that said last-mentioned railroad company became duly consolidated with another railroad company so as by such consolidation to constitute and form the Memphis, Carthage and Northwestern Railroad Company. That said bonds were thereafter delivered to said Memphis, Carthage and Northwestern Railroad Company in payment of a subscription of seventy-five thousand dollars made to said Memphis, Carthage and Northwestern Railroad Company
8 by said defendant in pursuance of said vote, and the said defendant denies that said defendant ever received any stock for said bonds in said Memphis, Carthage and Northwestern Railroad Company, that they now hold or own any stock in said company, and that it ever claimed or exercised any of the rights of a stockholder in said company.

And for a second and further defence to said amended petition, and every count and cause of action therein contained, this defendant alleges and avers that the bonds mentioned and described in the plaintiff's petition and the several counts and causes of action therein contained, to which the coupons in suit were attached, were issued without any legal warrant or authority, and are absolutely void wheresoever they may be found; because,

First. The total value of all taxable property, real and personal, in and of the township of Salamanca, county of Cherokee and State of Kansas, for the year 1871, as appears on the assessment and tax rolls of said year, and returned and adjusted and equalized prior to said vote of November 7th, 1871, and prior to the order of the board of county commissioners for the holding of said election, was and is one hundred and forty-eight thousand six hundred and eighty-six dollars ($148,686.00);

Second. The total value of all taxable property, real and personal, in and of said township for the year 1872, as appears on said assessment and tax rolls for that year, returned, equalized, and adjusted prior to September 2nd, 1872, the date of the issue of the bonds mentioned in the petition, was and is one hundred and eighty-one thousand five hundred and ninety-one dollars ($181,591.00);

9 Third. The total value of all taxable property, real and personal, in and of said township for the year 1873, as appears on the assessment and tax rolls of that year, as returned, adjusted, and equalized prior to the period when the first payment of interest was due on said bonds, by the face thereof, was and is one hundred and fifty-nine thousand five hundred and fifty-seven dollars ($159,557.00);

And the whole of said issue of bonds under said election of November 7th, 1871, amounted to $75,000.00; and the width of said township of Salamanca, from east to west, was and is six miles; and the contemplated line of said State Line, Oswego and Southern Kansas Railroad, and the located and graded line of said Memphis, Carthage and Northwestern Railroad were and are from east to west through said township, and were only proposed and intended to be constructed six miles in said township; and that no railroad has ever been constructed or operated in said township by either of the R. R. companies mentioned herein.

And for a third and further defence to said petition and every count and cause of action therein contained, the defendant alleges and avers that the bonds mentioned in the plaintiff's petition and the several counts and causes of action therein contained, to which the coupons in suit were attached, were issued without any legal warrant or authority, and are absolutely void wheresoever they may be found, because there was an election held November 7th, 1871, whereat it was voted by the qualified electors of said Salamanca Township, that said township should subscribe $75,000.00 to the capital stock of the State Line, Oswego and Southern Kansas Railroad Company and
10 issue its bonds in payment therefor; that said State Line, Oswego and Southern Kansas Railroad Company, after said election and vote of November 7th, 1871, became, by and under the laws of the State of Kansas, duly consolidated with another railroad company, and that by such consolidation a new corporation was constituted and formed, called the Memphis, Carthage and Northwestern Railroad Company; that the said township of Salamanca, after such consolidation, in pursuance of said vote of November 7th, 1871, and no other, subscribed $75,000.00 to the capital stock of said Memphis, Carthage and Northwestern Railroad Company, and issued $75,000.00 of the bonds of said township in payment therefor, a part of which are the same bonds described in the plaintiff's amended petition, and delivered them to the said Memphis, Carthage and Northwestern Railroad Company in payment of said subscription; that no vote was ever had in said Salamanca Township to subscribe to the capital stock of either the State Line, Oswego and Southern Kansas Railroad Company, or to the Memphis, Carthage and Northwestern Railroad Company, or to any other railroad company, other or different from the vote of November 7th, 1871, hereinbefore set forth.

Wherefore the said defendant asks judgment for its costs herein.

W. H. WHITEMAN,
PRATT, BRUMBACK & FERRY, &
BLAIR & HILL,
Att'ys for Def't.

(Endorsed:) No. 1143. U. S. circuit court. William C. Wil-
11 son, pl'ff, vs. Salamanca Township, Cherokee County, State of Kansas. Answer to amended petition. Filed Nov. 26, 1876. A. S. Thomas, clerk.

And on this day, to wit, November 26th, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his demurrer to amended petition in said entitled action, which said demurrer, with the endorsements thereon, is in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States for the district of Kansas.

WILLIAM C. WILSON *vs.* SALAMANCA TOWNSHIP, CHEROKEE COUNTY, Kansas.	No.

And now comes William C. Wilson, plaintiff, by his attorneys, and demurs to the amended answer herein filed by the defendant to the amended petition, and, for ground of demurrer, shows—

That the said answer does not state facts sufficient to constitute any defence to plaintiff's causes of action in his said petition set forth.

Whereof plaintiff prays the judgment of the court.

CLOUGH & WHEAT,
JOSEPH SHIPPEN,
Pl'ff's Atty's.

(Endorsed:) No. 1143. U. S. circuit court dist. of Kansas. Wm. C. Wilson vs. Salamanca Township. Demurrer. Filed Nov. 26, 1875. A. S. Thomas, clerk.

And on this day, to wit, Saturday, November 27th, 1875, in the November term, A. D. 1875, in said entitled court, in the record of the proceedings in said entitled action is the following entry, to wit:

12 *Judgment.*

WILLIAM C. WILSON *vs.* SALAMANCA TOWNSHIP, CHEROKEE COUNTY, Kansas.	1143.

Now at this day come the said parties, William C. Wilson, plaintiff, by his attorneys, Clough & Wheat, and Joseph Shippen and said Salamanca Township, Cherokee County, Kansas, by its attorneys, W. H. Whiteman, Pratt, Brumback & Ferry and Blair & Hill, and said cause having come on to be heard upon the plaintiff's demurrer to defendant's amended answer to plaintiff's amended petition, and the same having been argued by counsel, and the court being fully advised in the premises, it is ordered that said demurrer be overruled, to which ruling said plaintiff excepts, and the plaintiff electing to abide by his said demurrer, and refusing to plead further, upon motion of the defendant that final judgment be entered up herein:

It is therefore considered, ordered, and adjudged that the defendant go hence without day and have and recover from said plaintiff its costs herein laid out and expended taxed at $, and thereof have execution.

And on the *the* trial or hearing of the said suit certain questions occurred, upon which the opinions of the judges were opposed, and the points upon which they so disagreed were stated under the direction of the judges and certified, and such certificate was ordered to be entered of record.

Certificate of divisien.

Be it remembered that at a regular term of the circuit court of the United States for the district of Kansas, begun and held at the city of

Topeka, in the State of Kansas, on the twenty-second day of November, 1875, whereat there were present the honorable John F.
13 Dillon, circuit judge, and the honorable C. G. Foster, district judge, in a certain civil cause therein pending, wherein William C. Wilson is plaintiff and Salamanca Township, of Cherokee County, Kansas, is defendant, and a final judgment having been therein entered, upon the trial or hearing whereof certain questions occurred upon which the opinions of the said judges were opposed:

Now this is to certify that the points upon which said judges so disagreed are stated under the direction of the judges and certified as follows:

First. Whether or not in said action by a bona fide holder of the interest coupons sued on for value and without notice the fact that the amount of bonds, to wit, seventy-five thousand dollars, issued by the defendant, was in excess of the amounts prescribed by the acts of the legislature of Kansas, approved February 25th, 1870, and approved March 2nd, 1872, in relation to the assessed taxable property of the defendant at the times of the voting and issueing said bonds constitute a defence in bar of the plaintiff's causes of action.

Second. Whether or not in said action by a bona fide holder of the interest coupons sued on for value without actual notice the fact that after the order of the board of county commissioners for an election, & after a favorable vote by a three fifths majority of the qualified electors of Salamanca Township, according to law, to subscribe stock in the State Line, Oswego and Southern Kansas Railroad Company, payable in negotiable bonds, to aid in the construction of its railroad, the subscription of stock and the issue of bonds without any further election were made to the Memphis, Carthage and Northwestern Rail-
14 road Company with which said prior company, in whose favor the vote was had, had become merged and consolidated under a law existing at the time of said election, to form a continuous line, is a sufficient defence in bar of plaintiff's causes of action.

Done and certified this twenty-seventh day of November, A. D. 1875.

JOHN F. DILLON.
C. G. FOSTER.

And on this day, to wit, November 27th, 1875, the plaintiff, by his attorney, filed in the clerk's office of said court his appeal bond in said entitled action, which said bond, with the endorsements thereon, is in the words and figures following to wit:

Appeal bond.

Know all men by these presents, that we William C. Wilson, of S't Louis, Missouri, by Joseph Shippen, his attorney in fact, as principal, and Joseph Shippen, of said city, as surety, are held and firmly bound unto Salamanca Township, of Cherokee County, Kansas, in the just and full sum of two hundred dollars, to be paid to the said Salamanca Township, its successors and assigns, to which payment well and truly to be made, we bind ourselves, and each of jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents, sealed with our seals and dated this 27th day of November, A. D. 1875.

Whereas, the said William C. Wilson hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered against him in the circuit court of the United States for the dis-

trict of Kansas at the November term, A. D. 1873, in favor of said Salamanca Township.

15 Now, therefore, the condition of this obligation is such that if the said William C. Wilson shall prosecute its said writ of error to effect and answer, and pay all damages and costs if it fail to make its plea good, then this, the above obligation, to be void, otherwise to remain in full force and virtue.

WILLIAM C. WILSON,
By his attorney in fact, JOSEPH SHIPPEN.
JOSEPH SHIPPEN.

Approved by—

JOHN F. DILLON.
Circuit Judge.

(Endorsed:) No. 1143. U. S. circuit court, district of Kansas. William C. Wilson vs. Salamanca Township. Appeal bond. Filed Nov. 27th, 1875. A. S. Thomas, clerk.

16 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of the proceedings in the action of William C. Wilson vs. Salamanca Township, Cherokee County, Kansas, No. 1143, in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 18th day of January, A. D. 1876.

[SEAL.] A. S. THOMAS, *Clerk.*

17 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between William C. Wilson, plaintiff, and Salamanca Township, of Cherokee County, Kansas, defendant, a manifest error hath happened to the great damage of the said William C. Wilson, as by his complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 27th day of November, A. D. 1875.

[SEAL.]

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed by—

JOHN F. DILLON.

(Indorsed:) No. 1143. William C. Wilson vs. Salamanca Township, Cherokee County, Kansas. Writ of error. Filed Nov. 27, 1875. A. S. Thomas, clerk.

18 The United States of America to Salamanca Township, of Cherokee County, Kansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein William C. Wilson is plaintiff in error and you are defendant in error to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John F. Dillon, judge of the circuit court of the United States for the district of Kansas, this 27th day of November, A. D. 1875.

JOHN F. DILLON,
Judge United States Circuit Court for District of Kansas.

19 Service of the within citation is hereby acknowledged and accepted at Topeka, Kansas, this 27th day of November, A. D. 1875.

SALAMANCA TOWNSHIP, OF CHEROKEE COUNTY, KANSAS,
Defendant in Error.
By BLAIR & HILL,
Its Attorneys.

(Indorsed:) No. 1143. William C. Wilson vs. Salamanca Township, Cherokee County, Kansas. Citation. Filed Nov. 27, 1875. A. S. Thomas, clerk.

20 It is hereby stipulated and agreed by and between the parties to the within suit, that the foregoing transcript contains a full, true, and complete record of all the proceedings requiring to be certified by the clerk of said court for the determination of the questions involved in the cause for consideration of the Supreme Court of the United States upon the writ of error allowed; and we hereby waive all objections thereto for or on account of the abbreviation of the petition and other omissions therein by the clerk.

JOSEPH SHIPPEN,
Plaintiff's Att'y.
W. H. WHITEMAN, BLAIR & HILL,
Att'ys for Def't.

(Indorsement on cover:) No. 365. William C. Wilson, plaintiff in error, vs. Salamanca Township, Cherokee County, Kansas. C. C. U. S. Filed 17 March, 1876.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 101.

WILLIAM C. WILSON, Plaintiff in Error,

vs.

SALAMANCA TOWNSHIP OF CHEROKEE COUNTY, KANSAS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF OF PLAINTIFF IN ERROR.

JOSEPH SHIPPEN,
Attorney for Plaintiff in Error.

Halstaff Print, Singer Building.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 101.

WILLIAM C. WILSON, Plaintiff in Error,

vs.

SALAMANCA TOWNSHIP OF CHEROKEE COUNTY, KANSAS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT.

This was an action brought by the plaintiff in error who was also plaintiff below against Salamanca Township, of Cherokee County, Kansas, for the collection of 321 interest coupons for $50 each, detached from negotiable bonds issued by defendant to the Memphis, Carthage and Northwestern Railroad company to aid in the construction of its railroad.

THE PETITION,

Which is in the usual form, states that defendant made and issued said bonds, under the authority of the act of March 2,

1872, by order of the qualified electors of said township at an election duly held, as by the recitals of said bonds fully appears, to said railroad company in payment of defendant's stock subscription of $75,000, to aid in the construction of its railroad, and that said bonds were so received and applied, having been sold by said company for value with the coupons attached; and that the Auditor of the State of Kansas, by his certificate indorsed upon said bonds, under his seal of office, duly certified that said bonds had been duly registered in his office, in accordance with said act of March 2d, 1872: and that plaintiff is the holder for the value of the coupons sued on: said bonds being in the following form:

UNITED STATES OF AMERICA—STATE OF KANSAS—COUNTY OF CHEROKEE—SALAMANCA TOWNSHIP BOND.

No. — *Interest ten per cent. per annum.* $500.

KNOW ALL MEN BY THESE PRESENTS, That the municipal township of Salamanca, in the county of Cherokee and state of Kansas, acknowledges itself indebted and firmly bound to the Memphis, Carthage & Northwestern Railroad Company, or bearer, in the sum of five hundred dollars, which sum the said township of Salamanca, for value received, hereby promises to pay said company, or bearer, at the National Park Bank, in the city of New York and state of New York, twenty years after date, with interest thereon from the date hereof at the rate of ten per cent. per annum, payable annually on the first day of September of each year, on the presentation and delivery at said National Park Bank, in said city of New York, of the coupons of interest hereto attached.

This bond is issued pursuant to an order of the proper officers of said township, made by authority of an act of the Legislature of the state of Kansas, entitled, "An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other internal improvements, and and providing for the registration of said bonds, the registration of other bonds, and the repealing of all laws in conflict

therewith," approved March 2d, 1872, and ordered by the qualified electors of said township at an election duly held.

In testimony whereof, the said township of Salamanca has executed this bond by the township trustee of said township, under the order of the proper officers of said township, signing his name hereto and by the township clerk of said township, under a like order, attesting the same and affixing hereto his name. Done this second day of September, A. D. 1872.

JOHN RALEY,
Township Trustee, Salamanca Township,
Cherokee County, Kansas.

W. I. BRANIN,
Township Clerk of Salamanca Township,
Cherokee County, Kansas.

CERTIFICATE ENDORSED.

I, A. Thoman, Auditor of the state of Kansas, do hereby certify that this bond has been regularly and legally issued, that the signatures thereto are genuine, and that such bond has been duly registered in my office, in accordance with an act of the legislature entitled an act to authorize counties, incorporated cities and municipal townships, to issue bonds for the purpose of building bridges, aiding in the construction of railroads or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith. Approved March 2d, 1872.

Witness, my hand and official seal this 11th day of October, 1872.

A. THOMAN,
[SEAL] Auditor of State,

DEFENDANT'S ANSWER

Thereto stated. (Record 5.)

1. That the bonds are void, because the whole issue of said bonds was $75,000, the width of the township being six miles, and the taxable wealth thereof was,

In 1871, prior to the vote on subscription, - - - - $148,686
In 1872 prior to the issue of the bonds, - - - - $181,591
In 1873, prior to the first coupons' maturity, - - - $159,557

2. "And defendant avers that the bonds mentioned in the plaintiff's petition and the several counts and causes of action therein contained, to which the coupons in suit were attached, were issued without any legal warrant or authority and are absolutely void wheresoever they may be found, because there was an election held November 7, 1871, whereat it was voted by the qualified electors of said Salamanca township that said township should subscribe $75,000 to the capital stock of the State Line, Oswego and Southern Kansas Railroad Company and issue its bonds in payment therefor; that said State Line, Oswego and Southern Kansas Railroad Company, after said election and vote of November 7, 1871, became by and under the laws of the State of Kansas, duly consolidated with another railroad company, and that by such consolidatiou a new corporation was constituted and formed, called the Memphis, Carthage and Northwestern Railroad Company, that the said township of Salamanca, after such consolidation, in pursuance of said vote of November 7, 1871, and no other, subscribed $75,000 to the capital stock of said Memphis, Carthage and Northwestern Railroad Company, and issued $75,000 of the bonds of said township in payment therefor, a part of which are the same bonds described in the plaintiff's amended petition, and delivered them to the said Memphis, Carthage and Northwestern Railroad Company in payment of said subscription; that no vote was ever had in said Salamanca township to subscribe to the capital stock of either the StateLine, Oswego and Southern Kansas Railroad Company, or to the Memphis, Carthage and Northwestern Railroad Company, or to any other railroad company, other or different from the vote of November 7, 1871, hereinbefore set forth."

PLAINTIFF'S DEMURRER

Thereto, (Record 7), stated the ground that said answer did not state facts sufficient to constitute any defense to plaintiff's action.

The court below overruled this demurrer, and plaintiff electing to abide thereby, rendered final judgment thereon for the defendant, the judges being divided in opinion upon the following

CERTIFIED QUESTIONS.

First. Whether or not in said action by a *bona fide* holder of the interest coupons sued on for value and without notice, the fact that the amount of bonds, to wit, seventy-five thousand dollars, issued by the defendant was in excess of the amounts prescribed by the acts of the legislature of Kansas, approved February 25, 1870, and approved March 2, 1872, in relation to the assessed taxable property of the defendant at the times of the voting and issuing said bonds, constitute a defense in bar of the plaintiff's causes of action.

Second. Whether or not in said action by a *bona fide* holder of the interest coupons sued on, for value without actual notice, the fact that after the order of the board of county commissioners for an election, and after a favorable vote by a three-fifths majority of the qualified electors of Salamanca township according to law, to subscribe stock in the State Line, Oswego and Southern Kansas Railroad Company, payable in negotiable bonds, to aid in the construction of the railroad, the subscription of stock and the issue of bonds without any further election were made to the Memphis, Carthage and Northwestern Railroad Company, with which said prior company, in whose favor the vote was had, had become merged and consolidated under a law existing at the time of said election, to form a continuous line, is a sufficient defense in bar of plaintiff's causes of action.

THIS CASE

Is brought into this Court by William C. Wilson, the plaintiff below, by a writ of error to the Circuit Court of the United States for the District of Kansas.

ASSIGNMENT OF ERRORS.

Plaintiff assigns for error—

1. That the court below erred in overruling the demurrer to the answer, and rendering final judgment for the defendant.

2. That the court below erred in not sustaining the demurrer to the answer, and rendering final judgment for the plaintiff.

POINTS AND AUTHORITIES.

I.

The POWER to issue these bonds was conferred upon defendant by an act of the General Assembly of the state of Kansas, recited therein, entitled "An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds and the repealing of all laws in conflict therewith." Approved March 2, 1872.

Laws of Kansas of 1872, p. 110.

"Section 1. That the board of county commissioners of any county, the mayor and common council of any incorporated city, and the trustee, clerk and treasurer of any municipal township, in this state, are hereby empowered to issue the bonds of such county, city or township, in any sum necessary not greater than ten per cent., inclusive of all other bonded indebtedness, of the taxable property of such county, city or township, for the purpose of building bridges, free or otherwise, or to aid in the construction of railroads or water power, by donation thereto or the taking of stock therein, or for other works of internal improvement. * * * *Provided further*, That under a proposal for aid to any railroad, any township having less than two hundred thousand dollars taxable property may issue in addition to the ten per cent. authorized in this section ten per centum of an amount equal to the number of miles of railroad (agreed under such proposal to be constructed within such township) multiplied by six thousand: *And provided further*,

That the limit prescribed in this section shall not apply and be considered to restrict or prevent the issuing of any bonds heretofore voted, or vote now pending, in any county or township in this state and which bonds may not have yet been issued, but that the limit herein shall only be considered as applying only to the issuing of bonds to be hereafter voted under this law."

Sec. 2. Provides when and where such bonds shall be payable.

"And (such bonds) if issued by a township shall be signed by the township trustee and attested by the township clerk."

Sec. 3. "Before any bonds shall be issued as herein provided, the same shall be ordered by a vote of the qualified electors of such county, city or township."

Sec. 12. "The officers of any county, city or township * * * * shall at the time of issuing the same (such bonds) make out and transmit to the auditor of state a certified statement of the number, amount and character of the bonds so issued, to whom issued and for what purpose, which statement shall be attested by the clerk of the county, city or township issuing the same. * * *

Sec. 14. Within thirty days after the delivery of such bonds, the holder thereof shall present the same to the auditor of state for registration, and the auditor shall upon being satisfied that such bonds have been issued according to the provisions of this act, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall under his seal of office certify upon such bonds the fact that they have been regularly and legally issued; that the signatures thereto are genuine, and that such bonds have been registered in his office according to law; for which registration and certificate the auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof.

Township of Burlington vs. Beasley, 94 U. S., 310.

Township of Rock Creek vs. Strong, 96 id., 271.

Leavenworth County vs. Miller, 7 Kas., 479, 536 (1871).

II.

It stands admitted of record—

1. That the defendant made and issued to the Memphis, Carthage and Northwestern Railroad Company the bonds in controversy in the form alleged.

2. That said bonds recite that they were issued by authority of the act of March 2, 1872, and were ordered by the qualified electors of said township at an election duly held.

3. That the state auditor certified that said bonds were regularly and legally issued and that they were registered in accordance with said act.

4. That defendant received $75,000 of the stock of said railroad company, which it still owns, and exercised its rights as such stockholder therein.

5. That plaintiff is the holder for value of the coupons sued on.

Thereby defendant is conclusively *estopped* from the defences attempted by its answer.

City of Atchison vs. Butcher, 3 Kas., 104 (1865).
Knox County vs. Aspinwall, 21 How., 544.
Moran vs. Miami County, 2 Black, 731.
Mercer County vs. Hackett, 1 Wall, 83.
Supervisors vs. Schenck, 5 id., 784.
Pendleton County vs. Amy, 13 Wall, 297.
Lexington vs. Butler, 14 Wall, 282.
Grand Chute vs. Winegar, 15 Wall, 355.
Lynde vs. The County of Winnebago, 16 Wall. 6.
Kenicott vs. The Supervisors, id., 452.
St. Joseph Township vs. Rogers, id., 644.
Town of Coloma vs. Eaves, 92 U. S., 484.
Town of Venice vs. Murdock, id., 494.
Converse vs. Fort Scott, id., 503.
County of Moulrie vs. Savings Bank, id., 631.
Marcy vs. Town of Oswego, id., 637.
Humboldt Township vs. Long, id., 642.
Leavenworth County vs. Barnes, 94 U. S., 70.
Douglas County vs. Bolles, id., 104.
Johnson County vs. January, id., 202.
Commissioners of Marion County vs. Clark, id., 278, 286.

Township of Burlington vs. Beasley, id., 310.
County of Moultrie vs. Rockingham Bank, id., 631.
Town of East Lincoln vs. Davenport, id., 801.
County of Cass vs. Shores, 95 U. S., 375.
Township of Rock Creek vs. Strong, 96 U. S., 271.
San Antonio vs. Mehaffy. id., 312.
County of Ray vs. Vansycle, id., 675.
Shores vs. Macon County, Oct. T., 1877, (unreported).

III.

The power to issue the bonds existing, the state auditor's certificates are conclusive against the defendant in favor of a *bona fide* purchaser that said bonds had been regularly and legally issued.

Laws of Kansas for 1872, p. 116, § 14, (quoted *supra* p. 7.)
Converse vs. City of Fort Scott, 92 U. S., 503, 509.
Marcy vs. Township of Oswego, 92 U. S., 637, 639.
Commissioners of Johnson vs. January, 94 id., 202, 206.

IV.

The excessive issue of bonds by defendant, as shown by its answer, constitutes as against the plaintiff, a *bona fide* purchaser, no valid defense.

Hence, the first certified question should be answered in the negative.

Marcy vs. Township of Oswego, 92 U. S., 637.
Humboldt Township vs. Long, id., 642.
Town of Coloma vs. Eaves, id. 484.

V.

The fact that after the favorable vote of November 7, 1871, by the qualified electors of the township under the act of February 25, 1870, to subscribe stock in the State Line, Oswego and Southern Kansas Railroad Company payable in negotiable bonds to aid in the construction of its railroad, the subscription of stock and the issue of bonds without any further election were made to

the Memphis, Carthage and Northwestern Railroad Company with which said prior company had become merged and consolidated under a law existing at the time of said election to form a continuous line is *not* a sufficient defence in bar of plaintiff's causes of action.

Said consolidation of railroad companies was made under the following law of Kansas, approved in 1870. General Laws, vol. 1, page 872, section 4622:

"Section 1. Any two or more railroad companies in this state, existing under general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form a continuous line or lines of railroad, and any railroad company organized as aforesaid, and any railroad company duly organized and existing under the laws of an adjoining state, whose lines of railroad shall connect at the state line, so as to form when completed a continuous line of railroad, are hereby authorized to consolidate and form one company owning and controlling such continous line or lines of railroad with all the rights, powers, privileges and immunities, and subject to all the obligations and liabilities to the state, which belonged to or vested (rested) upon either of the companies making such consolidation; in order to accomplish such consolidation, the companies may enter into contract fixing the terms and conditions thereof, which shall first be ratified and approved by parties representing two-thirds of all the stock held in each company or road proposing to consolidate at a meeting of the holders of the stock of said companies called for that purpose or by the approval in writing of the persons or parties holding or representing two-thirds of such stock, and when so ratified and approved and a new name for the consolidated company, which the contracting parties are hereby authorized to agree upon, or which may be adopted by the board of directors of the consolidated company, shall have been adopted, a certified copy of such articles of agreement with the corporate name to be assumed shall be filed with the secretary of state, when the consolidation shall be considered duly consumated and a certified copy from the office of the secretary of state, shall be deemed conclusive evidence thereof; the boards of directors in the several compan-

ies may, upon the said approval and filing as aforesaid of said certificate, proceed to carry out such contract according to its provisions, calling in the certificates of stock then outstanding in the several companies or roads and issuing certificates of stock in the new consolidated company under such a corporation name as may have been adopted."

Hence the second certified question should be answered in the negative.

Nugent vs. Supervisors of Putnam County, 19 Wall. 241.
Central railroad &c. Co. vs. Georgia, 92 U. S. 665.
East Lincoln vs. Davenport, 94 U. S. 801.
Commissioners of Johnson County vs. Thayer, id. 631.
Scotland County vs. Thomas, id. 682.
County of Leavenworth vs. Barnes, id. 70, 72.
Commissioners of Marion County vs. Clark, id. 278, 286.

For authorities on estoppel in favor of *bona fide* holder see cases cited above, under the second point.

ARGUMENT.

I AND II.

The validity of a negotiable municipal bond is subject to three questions, viz:

1st. Was there legislative power for its issue?

2d. Was such power exercised?

3d. Is the holder a *bona fide* purchaser?

Affirmative answers thereto being given, the bond according to the many decisions of this court must be held valid.

In San Antonio vs. Mehaffy, 96 U. S. 314, this court says:

"The rule in such cases is that if the municipality could have had the power under any circumstances to issue the securities, the *bona fide* holder has a right to presume they were issued under the circumstances that gave the authority, and they are no more liable to be impeached in his hands for any infirmity than any other commercial paper."

"The city is estopped by the recital on the face of the securities to deny its verity. A *bona fide* purchaser had a right to regard it as true, and was not bound to look further." Citing

Supervisors vs. Schenck, 5 Wall, 772.
Commissioners &c. vs. Aspinwall, 21 How. 539.
Mercer County vs. Hackett, 1 Wall, 83.
Grand Chute vs. Winegar, 15 Wall, 355.

In Commissioners of Marion County vs. Clark, 94 U. S. 287, this Court says:

"Bonds of the kind executed by a municipal corporation to aid in the construction of a railroad, if issued, in pursuance of

a power conferred by the legislature, are valid, commercial instruments, and if purchased for value in the usual course of business before they are due, give the holder a good title, free of prior equities between antecedant parties, to the same extent as in case of bills of exchange and promissory notes. Such a power is frequently conferred to be exercised in a special manner or subject to certain regulations conditions or qualifications; but if it appears that the bonds issued show by their recitals that the power was exercised in the manner required by the legislature, and that the bonds were issued in conformity to the prescribed regulations and pursuant to the required conditions and qualifications, proof that any or all of the recitals are incorrect will not constitute a defense to the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulations, conditions or qualifications which it is alledged were not fulfilled." Citing

St. Joseph Township vs. Rogers, 16 Wall. 644.
Town of Coloma vs. Eaves, 92 U. S., 484.

In City of Lexington v. Butler, 14 Wall, 283, this court says:

"When a corporation has power under any circumstances to issue negotiable securities, the *bona fide* holder has a right to presume that they were issued under the circumstances which give the requisite authority, and that they are no more liable to be impeached for any infirmity in the hands of such holder, than any other commercial paper."

Further reference is made to the numerous cases cited *supra* pages 8 and 9.

FIRST. The existence of power is a question of *law*, determinable only by the constitution and statutes of the state. It is the emanation of the legislative will, and is in no wise dependent on the acts of the parties in its exercise. It suffices to say, *Ita scripta est.*

Power to issue the bonds now in controversy was given to the defendant, Salamanca Township, clearly and expressly by

the first section of the act of the General Assembly of the State of Kansas, dated March 2, 1872 (*supra* page 6), recited in the bonds. That such legislation was constitutional was decided in 1871, by the Supreme Court of Kansas, in the leading and well considered case,

Leavenworth County vs. Miller, 7 Kas. 479.

This court sustained bonds issued under said act by a Township to aid a grist mill.

Township of Burlington vs. Beasley, 94 U. S., 310.

And again sustained bonds issued thereunder by a township to aid a railroad company construct its depots and side tracks.

Township of Rock Creek vs. Strong, 96 id., 271.

SECOND. The exercise of such power is a question of *fact* determinable in this case by the pleadings.

The form of the bonds is stated as part of plaintiff's petition and is undenied by the answer. The bonds recite said act of 1872, and upon their face are strictly in conformity thereto. The 3d section of said act (*supra* page 7) provides: "*Before any bonds shall be issued as herein provided, the same shall be ordered by a vote of the qualified electors of such county, city or township.*" Said bonds recite they were issued pursuant to an order of the proper officers by authority of said act "*and ordered by the qualified electors of said township at an election duly held.*"

Plaintiff's petition avers that the bonds were duly registered and certified by the Auditor of the State, to have been regularly and legally issued, and this also appears by the form of bond given, and these averments are undenied by the answer.

Therefore, the Memphis, Carthage and Northwestern Railroad Company, although the original contracting party and first taker of the bonds, had a right to presume that the bonds were regularly and properly issued. Such was the doctrine of the Supreme Court of Kansas, at the time these bonds were issued.

In City of Atchison vs. Butcher, 3 Kansas, 104, decided in 1865, that court says:

"At the time of the issuing these bonds the City of Atchison,

was a municipal corporation, and as such, could exercise such powers as were conferred upon it by the act of the legislature, which created it, and none other. It took no powers by implication. It had power to take stock in the proposed railroad company and pay for it in its bonds, if a majority of the qualified voters should consent thereto, and when the bonds should be executed and offered, either in payment of the stock or as security for money borrowed with which to pay for it, the legal presumption so far as the creditor of the company would be concerned, would be that all the necessary steps to the legal issuance of the bonds had been taken. So in this instance the railroad company, when these bonds were offered in payment of their stock, were not bound to inquire whether there had been an election at which the proposition to take the stock had been submitted to the qualified voters and supported by a majority of them. This the company had a right to presume."

In State of Kansas ex rel. Henry Keeler vs. Walter H. Allen, 5 Kansas Rep. 213, (1869) it is said:

"It is within the scope of the authority of the Board of County Commissioners, to determine whether an election has been had authorizing them to subscribe stock in a railroad company and it is also within the scope of their authority to subscribe such stock, when such election has been held and to make all the necessary orders with reference to the same."

THIRD. The *bona fide* ownership of the bonds is a question of *fact* determinable in this case by the pleadings.

In addition to the presumption that the holder of such negotiable securities is a *bona fide* purchaser for value before maturity, plaintiff's petition herein expressly avers that said bonds were "*sold by the Railroad Company for value to the purchaser with the said coupons attached;*" and further "*that the plaintiff is the owner, holder and bearer thereof for value.*" These averments are undenied by the answer, and no notice of any kind to plaintiff is alleged. These facts, therefore, stand admitted of record.

If under the above cited decisions of the Supreme Court of Kansas, the railroad company could recover on such bonds, *a fortiori* the *bona fide* purchaser can.

See authorities cited *supra* page 8 and 9.

The three questions above stated have received as to the bonds now in controversy affirmative answers, and said bonds should therefore be held *valid*.

III.

The state auditor's certificates are conclusive against the defendant in favor of a *bona fide* purchaser, that said bonds had been regularly and legally issued.

The act under which these bonds purport on their face to have been issued provides (*supra* page 7.):

Sec. 12. "The officers of any county, city or township * * * * shall at the time of issuing the same (such bonds) make out and transmit to the auditor of state a certified statement of the number, amount and character of the bonds so issued, to whom issued and for what purpose, which statement shall be attested by the clerk of the county, city or township issuing the same. * * *"

Sec. 14. "Within thirty days after the delivery of such bonds, the holder thereof shall present the same to the auditor of state for registration, and the auditor shall, upon being satisfied that such bonds have been issued according to the provisions of this act, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall under his seal of office certify upon such bonds the fact that they have been regularly and legally issued, that the signatures thereto are genuine, and that such bonds have been registered in his office according to law; for which registration and certificate, the auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof."

The intention of the legislature was to preserve authoritative statements as to the securities issued, at the State Capitol among the public archives. This was for the two fold purpose of having authentic information accessible on the subject of the indebtedness of the respective municipalities, and second to afford the state auditor the official and best evidence of the facts which the law required him to certify.

It was made the duty of the auditor to register the bonds, "and certify upon such bonds the fact that they had been regularly and legally issued," But this was not to be done until he should be "satisfied that such bonds have been issued according to the provisions of this act." Moreover, this was to be done after the delivery of the bonds, and done at the instance of the bondholder who was required to pay therefor.

The manifest purpose of such certificate was to give the bonds additional credit. Thereby the makers would get greater value for expenditure in public improvements, and the holder would find his securities more marketable. The auditor was to be "*satisfied*" before he gave to the bonds the credit and influence of his official name and seal. He was thereby constituted by law a tribunal—one that was presumably disinterested and impartial—to pass upon the evidence presented to him by both the municipal officers, and by the bondholders. His decision then certified upon the bond was designed by the legislature to mean something. Back of that decision so made the defendant cannot go, as now herein attempted, to show that these bonds in controversy were not regularly and legally issued.

The case falls clearly within the principles laid down in

Town of Coloma vs, Eaves, 92 U. S. 484.

Various bonds registered and certified pursuant to this statute, have been before this court and allusions have been made to the facts of registration and certification as having important bearing on the questions considered, although the precise weight and effect thereof has not been defined. In each instance the bonds have been sustained, except in the case of McClure vs. Township of Oxford, 94 U. S. 429, and therein this Court concurred with the Supreme Court of Kansas, that there was no legislative power to issue the bonds.

Converse vs. Fort Scott, 92 U. S., 503, 509.

Marcy vs. Town of Oswego, 94 id., 637, 639.

Johnson County vs. January, 94 id., 202, 206.

IV.

The excessive issue of bonds by defendant, as shown by its answer, constitutes as against the plaintiff, a *bona fide* purchaser, no valid defense.

Section 1 of the statute (*supra* page 6) authorizes the officers of a township to issue the bonds of such township, "in any sum necessary, *not greater than ten per cent*, inclusive of all other bonded indebtedness, of the taxable property of such township," to aid in the construction of a railroad. But it contains the following proviso:

"*And provided further*, That the limit prescribed in this section shall not apply and be considered to restrict or prevent the issuing of any bonds heretofore voted, or vote now pending, in any county or township in this state and which bonds may not have yet been issued, but that the limit herein shall only be considered as applying only to the issuing of bonds to be hereafter voted under this law."

Defendant's answer states the amount of the taxable property of Salamanca township at different times.

The amount of bonds issued, of which those in controversy formed a part was $75,000, which far exceeded said prescribed limit of ten per cent.

This fact, however, does not constitute a valid defence to plaintiff's action because:

1st. These bonds were, as averred by the answer, voted November 7, 1871, prior to the adoption of said statute of March 2, 1872, and were issued thereafter. Hence they come within the said proviso and the prescribed limitation has no application to them.

2d. Defendant would be *estopped* from making such defence against the *bona fide* purchaser, by the acts of its own officers, even if said proviso had not excepted these bonds from such limitation.

The act of the township officers was the act of the township itself, and it is conclusively bound thereby.

Town of Coloma vs. Eaves, 92 U. S. 484.
County of Moulrie vs. Savings Bank, id., 631.
County of Scotland vs. Thomas, 94 id. 682, 692.

It was made the duty of the auditor to register the bonds, "and certify upon such bonds the fact that they had been regularly and legally issued." But this was not to be done until he should be "satisfied that such bonds have been issued according to the provisions of this act." Moreover, this was to be done after the delivery of the bonds, and done at the instance of the bondholder who was required to pay therefor.

The manifest purpose of such certificate was to give the bonds additional credit. Thereby the makers would get greater value for expenditure in public improvements, and the holder would find his securities more marketable. The auditor was to be "*satisfied*" before he gave to the bonds the credit and influence of his official name and seal. He was thereby constituted by law a tribunal—one that was presumably disinterested and impartial—to pass upon the evidence presented to him by both the municipal officers, and by the bondholders. His decision then certified upon the bond was designed by the legislature to mean something. Back of that decision so made the defendant cannot go, as now herein attempted, to show that these bonds in controversy were not regularly and legally issued.

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"*And provided further*, That the limit prescribed in this section shall not apply and be considered to restrict or prevent the issuing of any bonds heretofore voted, or vote now pending, in any county or township in this state and which bonds may not have yet been issued, but that the limit herein shall only be considered as applying only to the issuing of bonds to be hereafter voted under this law."

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2d. Defendant would be *estopped* from making such defence against the *bona fide* purchaser, by the acts of its own officers, even if said proviso had not excepted these bonds from such limitation.

The act of the township officers was the act of the township itself, and it is conclusively bound thereby.

Town of Coloma vs. Eaves, 92 U. S. 484.
County of Moulrie vs. Savings Bank, id., 631.
County of Scotland vs. Thomas, 94 id. 682, 692.

The ratio of the amount of bonds issued to the taxable property was a fact peculiarly within the knowledge and care of the defendants officers. It is in favor of a *bona fide* purchaser of the bonds, conclusively presumed to have been passed on by them before they subscribed and received the railroad company's stock, which they received and retain; and was also passed on by the Auditor of State, who was by law required to be "*satisfied*," before he certified to the world, under his official seal, that the bonds were regularly and legally issued. This general principle is enunciated clearly in;

Town of Coloma vs. Eaves, 92 U. S. 484.

Town of Venice vs. Murdock, id., 494.

That such excessive issue formed no valid defence against the *bona fide* purchaser, was expressly decided in

Marcy vs. Township of Oswego, 92 U. S. 637.

Humboldt Township vs. Long, id., 642.

V.

The fact that after the favorable vote of November 7, 1871, by the qualified electors of the township under the act of February 25, 1870, to subscribe stock in the State Line, Oswego and Southern Kansas Railroad Company payable in negotiable bonds to aid in the construction of its railroad, the subscription of stock and the issue of bonds without any further election, were made to the Memphis, Carthage and Northwestern Railroad Company, with which said prior company had become merged and consolidated under a law existing at the time of said election, to form a continuous line is *not* a sufficient defence in bar of plaintiff's causes of action.

The act of March 2, 1872, under which these bonds, on their face purport to have been issued, confers a broad power upon municipal officers to issue bonds to aid in the construction of railroads or other public improvements, with the proviso that they should be sanctioned by a vote of the people. The bonds could be issued either as a donation or for stock. Neither the specific company, nor any specific enterprise had to be desig-

nated. This statute is analogous to the one passed on by this court, in the case Commissioners of Johnson County vs. Thayer, 94 U. S. 631. Therein it was contended that the bonds were void because no particular road was referred to in the vote to subscribe stock. The court in its decision after quoting the statute, says (page 639):

"This language, in relation to the road to the subscription may be made is as general as words can make it. The board of commissioners may subscribe to the capital stock of, 'any railroad which is or may be located in or near the county they represent, and may issue the bonds of the county in payment for said stocks. But no such bonds shall be issued until the question shall be first submitted to a vote of the qualified electors of the county.' In neither of these clauses is there a qualification that the particular road shall be named in the submission or that any detail shall be set forth. The burden of bonds shall not be imposed upon the county, except by the previous assent of a majority of the electors. When the burden is assumed by the electors, it is quite reasonable that it should be left to the County Board to select the particular corporation in which the stock shall be taken. That trust can be there executed as wisely and judiciously as at a mass meeting of the voters."

At the time of the vote of the people, and the issuance of these bonds, the laws of Kansas expressly authorized railroad companies to consolidate.

General Laws, volume 1, page 872, sec. 4622, *supra* p. 10.

"All the rights, powers, privileges and immunities" of the respective companies, thereupon became vested in the consolidated company. Accordingly whatever right or claim the State Line, Oswego & Southern Kansas Railroad Company, had against Salamanca Township by virtue of the vote of the people November 7, 1871, prior to the consolidation inured to the benefit of the consolidated company—the Missouri, Carthage and Northwestern Railroad Company, which was its legal successor.

Such was the intent not only of the legislature of Kansas, but of the people when sanctioning the bonds by their votes. The main object in view was to secure an east and west line of communication, which must of necessity be had by joining another road in Missouri. A failure to effect such consolidation would

have been the defeat and subversion of the whole purpose to obtain a continous line, effecting a new outlet to the east.

This case is analagous to Nugent vs. Supervisors of Putnum County, 19 Wall 241, and the language therein used now closely applies.

"It was,therefore, contemplated by the legislature, as it must have been by the subscribers to the stock of the company, that precisely what has occurred might occur. Subscribers must be presumed to have known the law of the state, and to have contracted in view of it. When the voters of the county of Putnam sanctioned a county subscription by their vote, and when the board of supervisors, in pursuance of that sanction, resolved to make the subscription, they were informed by the law of the state, that a consolidation with another company might be made, that the stock they proposed to subscribe might be converted into stock of the consolidated company, and that the liability they assumed might become owing to that company. With this knowledge, and in view of such contingencies they made the contract. The consolidation, therefore, wrought no change in the organization or design of the company to which they subscribed, other than they contemplated at the time as possible and legitimate. It cannot be said that any motive for their subscription has been taken away, or that the consideration for it has failed. Hence the reason of the general rule, we have conceded, does not exist in this case, and consequently, the rule is inapplicable."

Another parallel case is Town of East Lincoln vs. Davenport, 94 U. S. 801, wherein this Court in concluding says:

"All this was provided for in the charter of the original company, to which the town subscription was made, and the subscription was made with the knowledge of the town, that new organizations might be made, and that the subscription was liable to be transferred to, and its stock to become that of another company. The statutes were no doubt in accordance with the public wish at the time of their passage, the evident principle being to give every facility and aid, by the means suggested to obtain a line of completed railroad to the eastern boundary of the state. Subsequent events have given more

prominence to the question of paying the bonds than it then had."

Again in County of Leavenworth vs. Barnes, 4 U. S. 70, this Court says: "Third, its is objected again that the bonds were issued to the Leavenworth and Missouri Pacific Railroad Company, where—as it is alleged that no such company was in existence on the twenty-first day of January, 1865, when the election was held, or on the first dayof Jul y when the bonds were issued. This company was organized in 1860, under the name of the Missouri River Railroad Company, and on the 18th of April, 1865, it consolidated with another company, increased its capital and changed its name to that of the Leavenworth and Missouri Pacific Railroad Company. We suppose this to have been authorized by the statutes of Kansas. Laws 1862, p. 768. We are certainly of opinion that when the parties interested in the two companies are content, when the newly named company has been in operation for ten years, when the county has received and held its stock until 1869, when the same was sold by the county by authority of the legislature—it is not competent for such a contracting party to say that there was an irregularity in the organization of the company.

The same doctrine is found in

County of Callaway vs. Foster, 93 U. S. 567.
County of Scotland vs. Thomas, 94 U. S. 682.

Again, in Casey vs. Galli, 94 U. S. 680, in treating the subject in its broader aspect, this Court says:

"There is another ground upon which both pleas must be held bad. Where a shareholder of a corporation is called upon to respond to a liability as such, and where a party has contracted with a corporation, and is sued upon the contract, neither is permitted to deny the existence or the legal validity of such corporation. To hold otherwise would be contrary to the plainest principles of reason and good faith, and involve a mockery of justice. Parties must take the consequences of the position they assume. They are estopped to deny the reality of the state of things, which they have made appear to exist, and upon which others have been led to rely. Sound ethics re-

quire that the apparent, in its effects and consequences should be as if it were real, and the law properly so regards it."

Irrespective, however, of all above said and cited upon this branch of this case, the plaintiff relies confidently upon the doctrine of estoppel in favor of a *bona fide* purchaser, based upon the recitals in the bonds. And this reliance is based on the line of decisions cited *supra* pages 8 and 9, under Point II, and decisions of this Court, rendered at this term, and as yet unreported.

Respectfully submitted,

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